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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

SHAWN VERRETTE,

Defendant and Appellant.

B301220

(Los Angeles County
Super. Ct. No. NA090280-02)

APPEAL from a judgment of the Superior Court of Los Angeles County, James D. Otto, Judge. Affirmed.

Jared G. Coleman, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Shawn Verrette appeals from the trial court's refusal at resentencing to strike a firearm enhancement under Penal Code section 12022.53.¹ Verrette's appointed counsel filed an opening brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). We affirm the judgment.

DISCUSSION

A jury found Verrette guilty of first degree special circumstance murder (count 1; §§ 187, subd. (a)(1), 190.2, subd. (a)(17)), second degree robbery (count 2; § 211), and conspiracy (count 4; § 182, subd. (a)(1)). As to count 1, the jury found true Verrette personally used a firearm (§ 12022.53, subd. (b)). As to count 2, the jury found true the firearm allegations pursuant to sections 12022, subdivision (a)(1), and 12022.53, subdivision (b). The trial court also found Verrette had one prior strike conviction (§§ 667, subs. (a)(1) & (b)–(i), 1170.12, subs. (a)–(d)).

The trial court sentenced Verrette in count 1 to life without the possibility of parole (LWOP), doubled under the Three Strikes law, plus a 10-year firearm enhancement under section 12022.53, subdivision (b), and a five-year enhancement for a prior felony under section 667, subdivision (a)(1). The court imposed and stayed the sentences on counts 2 and 4. The court also imposed a \$10,000 restitution fine pursuant to section 1202.4, subdivision (b).

Upon Verrette's initial appeal, we remanded the matter for resentencing but otherwise affirmed the judgment. We directed the trial court to modify the sentence to impose a single LWOP term for count 1, exercise its discretion to strike or dismiss the firearm enhancement pursuant to Senate Bill No. 620, and

¹ All further section references are to the Penal Code unless otherwise specified.

exercise its discretion to strike or dismiss the prior felony enhancement under Senate Bill No. 1343.² (*People v. Orozco* (Dec. 14, 2018, B276130) [nonpub. opn.].)

The trial court held the resentencing hearing on July 22, 2019. It struck the second LWOP sentence that was originally imposed, declined to dismiss or strike the firearm enhancement, and struck the five-year prior felony enhancement. Upon defense counsel's request, the court stayed the remaining balance owed on the \$10,000 restitution fine due to Verrette's asserted inability to pay. Verrette appealed.

DISCUSSION

We appointed counsel, who filed an opening brief pursuant to *Wende, supra*, 25 Cal.3d 436, requesting independent review of the record for arguable issues. Appellate counsel notified Verrette he did not raise any arguable issues, and sent Verrette a

² On January 1, 2018, Senate Bill No. 620 (2017–2018 Reg. Sess.) took effect, which amends section 12022.53, subdivision (h), to remove the prohibition against striking the gun use enhancements under this and other statutes. The amendment grants the trial court discretion to strike or dismiss an enhancement imposed under section 12022.53. (Stats. 2017, ch. 682, § 2.)

Senate Bill No. 1393, effective January 1, 2019, amends section 667, subdivision (a)(1), and section 1385, subdivision (b), to allow a trial court to exercise its discretion to strike or dismiss a prior serious felony conviction for sentencing purposes. (Stats. 2018, ch. 1013, §§ 1–2.)

Senate Bill Nos. 620 and 1393 applied to Verrette's sentence because his conviction was not yet final at the time the legislation took effect.

copy of the *Wende* brief as well as the record on appeal to allow him to submit any claims, arguments, or issues that he wished our court to review. We have received no reply from Verrette.

We are satisfied no arguable issues exist and Verrette's counsel has fully satisfied his responsibilities under *Wende*, *supra*, 25 Cal.3d at page 441 and *People v. Kelly* (2006) 40 Cal.4th 106, 123–124. However, there is a clerical error in the abstract of judgment that must be corrected. In its oral pronouncement of the sentence, the trial court struck the five-year prior felony enhancement imposed under section 667, subdivision (a). The abstract of judgment shows it was stayed. "Where there is a discrepancy between the oral pronouncement of judgment and the minute order or the abstract of judgment, the oral pronouncement controls." (*People v. Zackery* (2007) 147 Cal.App.4th 380, 385.)

DISPOSITION

The judgment is affirmed. Upon issuance of the remittitur, the trial court shall amend the abstract of judgment to reflect the five-year prior felony enhancement was stricken and not stayed. The trial court is directed to forward a certified copy of the amended abstract of judgment to the Department of Corrections and Rehabilitation.

BIGELOW, P. J.

We Concur:

GRIMES, J.

STRATTON, J.